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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

D.C.,

Petitioner,

v.

THE SUPERIOR COURT OF SOLANO
COUNTY,

Respondent;

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES, et
al.,

Real Parties in Interest.

A136072

(Solano County
Super. Ct. No. J37720)

D.C., mother of E.A., who is now just over six years old, petitions under California Rules of Court, rule 8.452 to vacate an order setting a selection and implementation hearing for E.A. pursuant to Welfare and Institutions Code section 366.26 (hereafter § .26).¹ The principal issue is whether the court had sufficient evidence on which to conclude that Mother received reasonable reunification services and there was no real prospect for reunification within the statutory period. The record shows that Mother was provided years of services to address her alcohol problem and its effects on E.A. We deny the petition.

¹ Further statutory references are to the Welfare and Institutions Code.

I. BACKGROUND

A. E.A.'s Prior Dependency

E.A. was first made a dependent of the juvenile court on a petition filed in July 2007, before his first birthday, after Mother was detained for public intoxication. The Department's August 2007 disposition report stated that Mother admitted she had a "chronic alcohol abuse problem that dates back at least ten years." She was participating in parenting classes and outpatient substance abuse treatment. The court adjudged E.A. a dependent (§ 300, subd. (b) [failure to protect]), and he was placed with a paternal aunt and uncle. Mother was provided reunification services, and ordered to abstain from use of alcohol and drugs.

A status review report prepared in December 2007 stated that Mother admitted drinking alcohol and using methamphetamine in October. A supplemental report for the six-month review hearing held in March 2008 stated that Mother was arrested in January for public intoxication. She continued to participate in intensive outpatient treatment with the HOPE program, was accepted in Dependency Drug Court, and was submitting to all required drug and alcohol testing. E.A.'s placement was continued, and reunification services to Mother were renewed to July 2008.

In July 2008 a status review report stated that Mother continued to participate in the HOPE program and Dependency Drug Court, and was testing negative for drugs and alcohol. Mother entered a residential substance abuse treatment program in August 2008 after "disclosing a relapse with alcohol." But in September 2008, E.A. was placed with Mother, and she was given family maintenance services. Maintenance services to Mother were continued at the 18-month review in February 2009.

The Department recommended termination of jurisdiction and E.A.'s return to Mother in April 2009. Mother graduated from Dependency Drug Court on April 21. Two days later, she was arrested for driving under the influence of alcohol and child endangerment after she drove the wrong way on two one-way streets with E.A. not properly restrained in the car.

A supplemental petition was filed under section 387 to detain E.A. out of Mother's care. The petition was granted, and E.A. was placed with his maternal grandmother on June 11. The Department recommended termination of reunification services and the setting of a .26 hearing in its disposition report filed on June 26. The Department reiterated that recommendation in an October addendum report, which noted that Mother had received a total of 27 months of family reunification and maintenance services. On October 8, after a contested dispositional hearing, the court ordered that E.A. be returned to Mother's care with provision of family maintenance services. The court terminated jurisdiction in April 2010.

B. E.A.'s Current Dependency

On February 11, 2011, less than a year after E.A. was returned to Mother's care, another section 300 petition was filed after Mother was involved in a drunken public altercation in E.A.'s presence. E.A. was then four years old. He was taken into protective custody and placed back with his paternal aunt and uncle. The Department's jurisdiction and disposition report stated that Mother admitted "several relapses" beginning in September 2010, and "fak[ing] . . . drug tests during the prior dependency." E.A.'s maternal grandmother told the social worker that Mother lived in a dangerous area, and had been putting E.A. in harm's way by taking him with her to a liquor store down the street in the middle of the night. The court adjudged E.A. a dependent and ordered that Mother receive reunification services.

E.A. was moved to a foster family agency home in June. The six-month review hearing was continued to November. The Department's report for that hearing stated that Mother was participating in outpatient substance abuse treatment and submitting negative drug tests. The court followed the Department's recommendation that reunification services continue, allowed the social worker discretion to place E.A. with Mother, and set the 12-month review hearing for April 10, 2012. E.A. was returned to Mother's care on December 23.

But barely two months later, a supplemental petition was filed under section 387 on February 27, 2012, alleging Mother failed to protect E.A. The detention report stated

that Mother reported at Dependency Drug Court on February 14 that she had relapsed. The social worker made an unannounced home visit on February 23, found Mother drunk, and returned E.A. to foster care. Family members reported the next day that Mother “had been drinking within days of [E.A.’s] return.” The supplemental petition recited the history of E.A.’s dependencies. E.A. had been removed from Mother four times due to her alcohol abuse, and she was continuing to drink despite the extensive services she had received to address the problem. The detention report noted that for nearly five years, since July 2007, Mother had been without services and an active case plan for only ten months. A jurisdictional and dispositional hearing on the supplemental petition was scheduled for April 3, and the 12-month review previously set for April 10 was vacated.

In the report for the April 3 hearing the Department asked the court to find that Mother had been offered reasonable services, to order that no further services be provided, and to set a .26 hearing. The Department requested that judicial notice be taken of files in the prior and current dependencies, which showed that, from July 2007 to February 2012, Mother had received 30 months of family reunification services focused primarily on her alcohol abuse, as well as 15 months of family maintenance services.

The April 3 hearing was continued to April 10 because Mother’s counsel was ill. On April 10, the court sustained the allegations of the supplemental petition, and, with the parties’ agreement, continued the dispositional hearing to April 30. At the April 30 hearing, Mother’s counsel requested a continuance to subpoena the assigned social worker who was no longer employed by the Department. The hearing was continued to May 17. The courtroom was not available on the 17th because a hearing in another case went longer than expected, and the hearing was continued to June 13.

At the June 13 hearing, the assigned social worker’s supervisor, Christopher Cassels, opined for the Department that E.A. could not be safely returned to Mother’s care by the “18-month mark in this case,” which was August 10, 2012, 18 months after E.A. was removed from Mother’s custody. Cassels said that the services Mother received after E.A. was removed for the second time in this case in February 2012 included

visitation with E.A., which did not begin until April because Mother did not respond to the Department's attempts to contact her. She was also provided with parent child interaction therapy, substance abuse treatment, and drug testing, and continued to participate in Dependency Drug Court. Mother was "out of compliance for approximately three drug court sessions," and had a "dilute test" for drugs and alcohol on June 4, just nine days before the hearing. Cassels' opinion that E.A. could not be safely returned to Mother during the required timeframe was based on her relapses in the prior dependency as well as this one.

The court granted Mother's request to submit supplemental briefing, and continued the hearing to June 29. On June 29, the court found that Mother had received reasonable services and that there was no substantial probability that E.A. could be safely returned to her care by August 10. The court terminated reunification services and set a .26 hearing for October 23.

II. DISCUSSION

A. Introduction

By the time the court terminated services and scheduled this case for selection and implementation, Mother had received over 12 months of reunification services in this dependency. The court was thus required to set the .26 hearing unless it found (1) that reasonable services were not provided, or (2) that it was substantially probable E.A. could be safely returned to Mother within 18 months after his February 2011 removal from the Mother's care. (See Welf. & Inst. Code, § 366.21, subd. (g)(1) & (2); *Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 166 (*Carolyn R.*); Seiser & Kumli on Cal. Juvenile Courts Practice and Procedure (2012 ed.) § 2.141[3], p. 2-427.) "A brief return to parental custody does not interrupt the running of this [18-month] period. . . . Nor is there a return to 'square one' when a supplemental petition pursuant to section 387 is filed and sustained." (*In re Steven A.* (1993) 15 Cal.App.4th 754, 765.) The court's findings on these two issues are reviewed for substantial evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688–691.)

B. Reasonable Services

Mother contends that she received inadequate reunification services. She argues that the services ceased to be reasonable after the section 387 supplemental petition was filed, asserting that, “[o]nce the Department decided to recommend against reunification services, they literally stopped making efforts to reunify the minor and his mother.” However, Cassels testified that Mother continued to receive the same kinds of services she had been provided for five years, including parenting assistance, visitation, and substance abuse treatment and testing. Visitation was delayed for a time, but according to Cassels’ testimony and the Department’s April 2012 report, Mother was primarily responsible for that delay. Substantial evidence supported a finding that reasonable services continued to be provided Mother after the filing of the section 387 supplemental petition.

Moreover, we disagree with Mother’s contention that the prior years of services she received were irrelevant to determining whether she was provided reasonable services. Her proceedings are distinctive for the duration of the services provided to help her defeat her chronic alcoholism and learn to be a responsible parent. Her claim that the services were unreasonable is entirely untenable.

C. Services Beyond 18 Months

Mother speculates that the court was unaware of its discretion to extend services beyond 18 months, and contends that, largely because of this alleged misunderstanding, the court “abused its discretion by finding there was not a substantial probability of reunification.” These arguments lack merit.

“A judge is presumed to know and follow the law” (*People v. Martin* (2005) 127 Cal.App.4th 970, 977), and nothing in this record suggests that the court was unaware of its ability to extend services beyond 18 months “under very limited circumstances” (*Carolyn B.*, *supra*, 41 Cal.App.4th at p. 167). The court properly focused on whether E.A. could be safely returned to the Mother by the 18-month deadline because, as we have said, a finding on that issue was required in deciding whether to set a .26 hearing. Thus, the only question presented on review in this case is whether the finding that E.A.

could not be safely returned to Mother within 18 months was supported by substantial evidence. The answer is plainly “yes,” given Mother’s extensive history of alcoholism and her latest relapse. Services beyond 18 months were not at issue, and Mother’s arguments concerning that issue are misplaced.

D. Prejudicial Continuances

Mother notes that the dispositional hearing on the section 387 supplemental petition was continued for various reasons from April 3 to June 29. She argues that she was unfairly prejudiced by the delays because “the 18-month deadline was a crucial factor in the decision to terminate [her] services,” and she “lost several months in what was perceived, although arguably incorrectly, in the time remaining to reunify.”

Most of the continuances in question were granted at the request of Mother’s counsel, and none were erroneous or prejudicial. Mother lost nothing in the process; she continued to receive services and gained more time to demonstrate progress toward sobriety. Given the history of Mother’s alcoholism and the timing of her latest relapse, there was no prospect that the outcome would have been different if the dispositional hearing had been held as originally scheduled.

III. DISPOSITION

The order to show cause is discharged, the stay of the .26 hearing is dissolved, and the petition for extraordinary writ is denied on the merits. (See § 366.26, subd. (1); *In re Julie S.* (1996) 48 Cal.App.4th 988, 990–991.) Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.